

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Maria Skillas

Serial No.: 10/691,977

Group Art Unit: 3677

Filed : 10/24/2003

Examiner: Kyle

Title : ERGONOMIC HANDLE PROVIDING HORIZONTAL AND VERTICAL
GRIPPING SURFACES

RESPONSE TO ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

Mail Stop Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

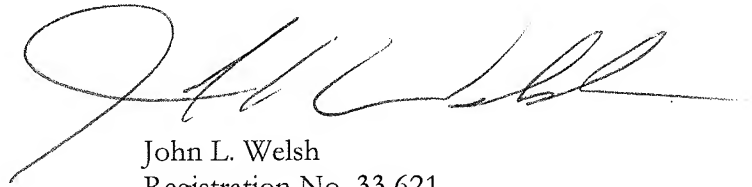
On December 2, 2008, Appellant received an Order Returning Undocketed Appeal to Examiner in the above-referenced application. The Order indicates that the Appellant failed to include claim 12 in the Appeal Brief appendix.

As shown by the attached date stamped filing receipt, "Appeal Brief (in triplicate) (54 pgs)" was filed in the above-referenced application on May 22, 2007. Claim 12 is listed on page 16 of the Appeal Brief. Applicant has attached a copy of the 18-page Brief which was filed on May 22, 2007. Included among these 18 sheets is page 16 of the Brief. Since the 18-page Brief filed in triplicate would equal 54 pages, and 54 pages would not have been filed without the inclusion of page 16, page 16 must have been lost by the U.S. Patent & Trademark Office after the filing of the Appeal Brief in the mail room of the U.S. Patent & Trademark Office. Since page 16 has apparently been lost, Appellant submits page 16 as originally filed on May 22, 2007.

Since the date stamped Filing Receipt attests to the fact that "Appeal Brief (in triplicate) (54 pgs)" were filed on May 22, 2007, Applicant respectfully requests the records of the USPTO be corrected and the application be forwarded to the Board of Patent Appeals and Interferences for consideration.

If any fees are required, the Commissioner is hereby authorized to charge Deposit Account No. 01-2221.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Welsh", is written over the typed name and registration number.

John L. Welsh
Registration No. 33,621

WELSH & FLAXMAN LLC
2000 Duke Street, Suite 100
Alexandria, VA 22314
(703) 920-1122
Our Docket No. SKI-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Please acknowledge receipt of the patent application of:

Applicant: Skillas

Serial No.: 10/691,977

Title: ERGONOMIC HANDLE PROVIDING HORIZONTAL AND
VERTICAL GRIPPING SURFACES

Docket No.: SKI-001

By : JLW/jlk

Including the following:

Transmittal of Supplemental Appeal Brief (1 pg.)

Appeal Brief (in triplicate) (54 pgs)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Maria Skillas

Group Art Unit: 3677

Serial No.: 10/691,977

Examiner: Kyle

Filed : 10/24/2003

Title : ERGONOMIC HANDLE PROVIDING HORIZONTAL AND VERTICAL
GRIPPING SURFACES

TRANSMITTAL OF SUPPLEMENTAL APPEAL BRIEF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

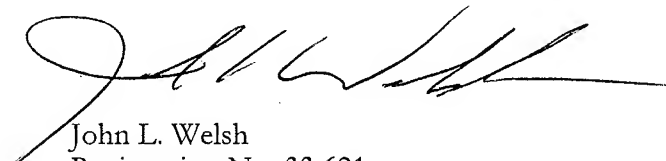
Sir:

In response to the outstanding Office Action of May 21, 2007, Appellant submits the attached Supplemental Appeal Brief (in triplicate) in compliance with 37 C.F.R. 41.37.

Appellant has addressed the issue set forth in the Notification of Noncompliant Appeal Brief and the brief is believed to be in proper order.

If additional changes are required, the Office is urged to contact the undersigned at (703) 920-1122. In addition, if additional fees are required in accordance with this filing, the Office is authorized to charge them to Deposit Account No. 01-2221.

Respectfully Submitted,



John L. Welsh
Registration No. 33,621

Welsh & Flaxman LLC
2000 Duke Street, Suite 100
Alexandria, VA 22314
(703) 920-1122

Docket No. SKI-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Maria Skillas

Group Art Unit: 3677

Serial No.: 10/691,977

Examiner: Kyle

Filed : 10/24/2003

Title : ERGONOMIC HANDLE PROVIDING HORIZONTAL AND VERTICAL
GRIPPING SURFACES

APPEAL BRIEF

Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450

Sir:

REAL PARTY IN INTEREST

Maria Skillas is the real party in interest in the above referenced patent application.

RELATED APPEALS AND INTERFERENCES

Neither Appellant's representative nor Appellant are aware of any related appeals and/or interferences affected by or having a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-3, 5-8, 11 and 12 are currently pending and stand finally rejected. Claims 4, 9 and 10 have been canceled. Appellant accordingly appeals the Examiner's final rejection of claims 1-3, 5-8, 11 and 12.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Final Rejection. As to the amendments filed prior to the Final Rejection, all amendments appear to have been entered and considered.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Claim 1 is the only independent claims involved in the present Appeal. Dependent claims 2-3, 5-8, and 11, which respectively depend from claim 1 are argued separately and, therefore, these claims are addressed in the present Summary in accordance with 37 C.F.R. 41.37(c)(1)(v).

In independent claim 1 Appellant has claimed an ergonomic handle 10 for a hand held appliance 12. The handle 10 offering users the choice of horizontal or vertical gripping of the handle and includes a first handle member 14 shaped and dimensioned for gripping by an individual and a second handle 18. The first handle member 14 having a first longitudinal axis 16, a first end 22 and a second end 24. The second handle member 18 shaped and dimensioned for gripping by an individual and having a second longitudinal axis 20, a first end 34 and a second end 36. The first end 34 of the second handle member 18 is the only portion of the handle connected to the appliance 12. The first handle member 14 and the second handle member 18 being connected such that the second longitudinal axis 20 of the second handle member 18 is oriented approximately perpendicular relative to the first longitudinal axis 16 of the first handle member 14 (see Fig. 1). The first end 22 of the first handle member 14 is connected to the second end 36 of the second handle member 18, the second end 24 of the first handle member 14 is free and unconnected to the appliance 12, and the first end 22 of the second handle member 18 is connected directly to the appliance 12 with the appliance extending downwardly therefrom along the second longitudinal axis 20 of the second handle member 18. (See Page 7, line 1- Page 8, line 7 of Specification).

In dependent claim 2, the appliance is further defined such that the first handle member 14 is oriented for substantially horizontal gripping when a user attempts to use the appliance. (See horizontal longitudinal axis 16 in Fig. 1 and Page 6, line 17 of Specification).

In dependent claim 3, the appliance is further defined such that the second handle member 18 is oriented for substantially vertical gripping when a user attempts to use the appliance. (See vertical longitudinal axis 20 in Fig. 1 and Page 6, line 20 of Specification).

In dependent claim 5, the appliance is further defined such that the first end 22 of the first handle member 14 is provided with a reduced diameter when compared to a central portion 26 of the first handle member 14, the first end 22 of the first handle member 14 being shaped and dimensioned to accommodate the palm and fingers of a hand of a user. (See Page 7, lines 12-16 of Specification).

In dependent claim 6, the appliance is further defined such that the first end 22 of the first handle member 14 further includes an indentation 23 shaped and dimensioned for receipt by a thumb of a user on the upper surface thereof. (See Page 7, lines 10-12 of Specification).

In dependent claim 7, the appliance is further defined such that the second end 24 of the first handle member 14 is provided with a swivel member 27 shaped and dimensioned for positioning of a thumb of a user thereon at the free end 30 thereof, the swivel member 27 being shaped and dimensioned to be continuous in shape with the remainder of the first handle member 14. (See Page 7, lines 17-22 of Specification).

In dependent claim 8, the appliance is further defined such that the far end 30 of the swivel member 27 includes a ridge 28 aiding a user in positioning a hand thereon by providing the user with a ready indicator as to a tip of the first handle member 14. ((See Page 7, lines 17-22 of Specification).

In dependent claim 11, the appliance is further defined to include a positioning projection 40 at a connection between the first handle member 14 and the second handle member 18. (See Page 8,

line 18-21 of Specification).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 1-3 and 12 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by U.S. Design Patent No. D337,667 to Lovett.
2. Whether Claims 5, 7, 8 and 11 are unpatentable under 35 U.S.C. § 103(a) over Lovett in view of U.S. Patent No. 2,263,136 to Knouse et al.
3. Whether Claim 6 is unpatentable under 35 U.S.C. § 103(a) over Lovett in view of Knouse et al., and further in view of U.S. Patent No. 5,044,083 to DeCarolis et al.

ARGUMENTS

I. CLAIMS 1-3 AND 12 ARE NOT ANTICIPATED UNDER 35 U.S.C. § 102(b) BASED UPON THE DISCLOSURE OF LOVETT.

The design of the hand held mixer shown in Lovett fails to anticipate claims 1-3 and 12. The mixer of Lovett does in fact show a first handle with a horizontal longitudinal axis, but fails to show a second handle as claimed. Contrary to the Examiner's position, the portion of the mixer in Lovett between the handle and the body of the appliance is not a handle. A user would be hard pressed to vertically grip this portion of the mixer as called for in claim 3 and use it as a handle when mixing. The portion of Lovett above the beaters is not intended to be gripped as a handle and in fact would be difficult or near impossible to be gripped by the hand of an average sized person. This portion is rectangular in cross-section and would be uncomfortable for one to try and wrap their hand about and use as a handle during the process of mixing.

Since Lovett fails to show a mixer with two handles as claimed it is requested the rejection based thereon be reversed.

II. CLAIMS 5, 7, 8 AND 11 ARE PATENTABLE OVER LOVETT IN VIEW OF KNOUSE ET AL.

The entire intention and purpose for which the present handle was conceived has been overlooked in applying Knouse et al. to the claims of the pending application. The very specific design of the present ergonomic handle with a two-position grip, including a swivel member for a rotating thumb rest to aid in keeping a natural fist position was conceived in order to achieve a variety of goals. Specifically, the present ergonomic handle easily fits in a users hand and is very comfortable to hold and control during use, in either the vertical position or the horizontal position.

The purpose of a dual grip is to give the user an advantage based on the density of the mixture with which he or she is working. Sometimes more force exerted downward is needed, especially in the early stages to break the mixture up before beating it to the desired consistency and thus one would grip the horizontal handle. The user could then switch and grip the vertical handle after the mixture is broken up and more comfortably mix.

Thumb positioning was also considered, in particular, the contour of the thumb support and the positioning of the thumb directly over the index finger when the handle is gripped. In addition to comfort, the claimed thumb support serve to enhance maneuverability, while achieving better control of the appliance during use.

In addition, the present handle provides a non-stress structure that is ergonomically correct for both left and right handed use by allowing the thumb support to swivel. The ergonomic handle design of the present invention is crucial in properly aligning the arm and body of an individual for use, while further reducing stress to the upper body, neck, shoulders, and back. The vertical grip is designed to keep the user's upper arm parallel to the body. This helps brace the arm during use to further reduce stress, while the lower portion of the arm is free to move easily left to right to achieve the task at hand.

Handheld kitchen mixers currently on the market have the user's arm and elbow flying through the air in an unnatural and very uncomfortable position. Even when mixing (whipping) something as soft as heavy cream to whip cream, for a relatively short period of time, fatigue quickly sets in. While the Examiner notes the Knouse handle could be gripped and used in any orientation, the Knouse handle is not designed to keep the body and arm properly aligned during use. It is simply a handle to grip and manage the best that the user can, with arm and elbow flailing. If one

grips the Knouse handle on either the vertical or horizontal orientation, one would have to rotate his upper arm out 90 degrees in order to then move the handle in a sweeping left to right motion. The Knouse et al. handle by form and design is intended for a firm grip and finger activation for safety and ease of use, as well as a back and forth motion for optimal performance. By design, it is not intended for a sweeping left to right motion and it would be awkward to try and move the device of Knouse et al. in a sweeping motion. This uncomfortable design flaw in current handheld kitchen mixers is where the idea and the design process originated.

With regard to claim 5, Appellant's first handle 14 is claimed to have a reduced diameter at its first end 22, which is where it connects to the second end 36 of the vertical handle 18. The diameter is reduced when compared to a central portion 26 of the first handle. Although, Knouse et al. shows a handle with a reduced diameter section the Office Action fails to provide any motivation for combining it with the mixer of Lovett in rejecting claim 5. Merely because two pieces of prior art include handles, that alone does not make it obvious to modify the handle of one device with features from the handle of a second device. A suggestion for the modification must be provided. The reduced diameter feature in Knouse et al. is for the purpose of being able to include a trigger 30 which is operated when the vertical handle 12 of Knouse et al. is gripped. The desire to have a trigger in the handle of Lovett cannot be found. With regard to claim 5, if Lovett and Knouse et al. were combined, there is no teaching as to how the end result would be a reduced diameter at the location claimed. Therefore, it is respectfully requested that this rejection of claim 5 be reversed.

With regard to claim 7, Appellant claims the second end 24 of the first handle member 14 is provided with a swivel member 27 shaped and dimensioned for positioning of a thumb of a user thereon at the free end thereof, the swivel member 27 being shaped and dimensioned to be

continuous in shape with the remainder of the first handle member 14. Knouse et al. fails to show said structure, as such this reference can't possibly teach the addition of this feature to the mixer of Lovett. It is not understood how protrusions around a trigger 32 function as Appellant's claimed swivel member. Swivel generally means that the structure moves and the protrusions in Knouse et al. don't appear to move. Since Knouse et al. fail to show a swivel member as claimed it is requested the rejection of claim 7 be reversed.

With regard to claim 8, Appellant claims that the far end of the swivel member includes a ridge aiding a user in positioning a hand thereon by providing the user with a ready indicator as to a tip of the first handle member. Again, this structure is not shown or disclosed by Knouse et al. A ridge (left of 32) is not a ridge on a swivel member as claimed. Further, the function of providing an indicator as to the tip of the first handle is not performed, and cannot be performed by the ridge (left of 32), as it is not located at the end of the handle in Knouse et al. Since Knouse et al. fail to show a swivel member as claimed it is requested the rejection of claim 8 be reversed.

With regard to claim 11, a positioning projection at a connection between the first handle member and the second handle member is claimed. The projection near 18 in Knouse et al. is not disclosed as being for the purpose of positioning. Regardless, there is no teaching as to why this positioning aid should be added to the device of Lovett. Lovett does not have two handles so there would be no reason to place a positioning projection on Lovett. With regard to claim 11, if Lovett and Knouse et al. were combined there is no teaching as to how the end result would be a positioning projection at the location claimed. Therefore, it is respectfully requested that this rejection of claim 11 be reversed.

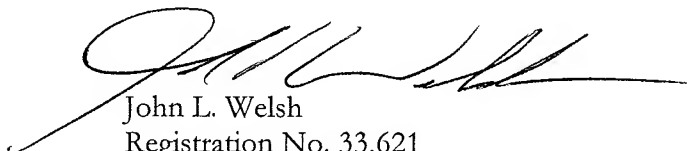
**III. CLAIM 6 IS PATENTABLE OVER LOVETT IN VIEW OF KNOUSE ET AL.
AND DECAROLIS ET AL.**

With regard to claims 6, Appellant claims the first end of the first handle member further includes an indentation shaped and dimensioned for receipt by a thumb of a user on the upper surface thereof. Appellant can find no such thumb receiving indentation in the device of Knouse et al. or DeCarolus et al. DeCarolus et al. does show a device with a single handle 10 and an upper surface 17, but Appellant cannot find where a thumb receiving indentation is shown or taught in the disclosure of DeCarolus et al. Since DeCarolus et al. fail to show an indentation as claimed, it is requested the rejection of claim 6 be reversed.

V. CONCLUSION

In conclusion, Appellant has now shown that the references cited by Examiner neither discloses nor suggests the claimed ergonomic appliance handle. Therefore, it is respectfully requested that the outstanding rejections of claims 1-3, 5-8, 11 and 12 be reversed.

Respectfully submitted,


John L. Welsh
Registration No. 33,621
Attorney for Appellant

WELSH & FLAXMAN, LLC
2000 Duke Street, Suite 100
Alexandria, VA 22314
(703) 920-1122
Docket No. SKI-001

CLAIMS APPENDIX

1. An appliance having an ergonomic handle offering users the choice of horizontally or vertically gripping the handle, comprising:

a first handle member shaped and dimensioned for gripping by an individual, the first handle member having a first longitudinal axis, a first end and a second end, and upper and lower surfaces;

a second handle member shaped and dimensioned for gripping by an individual, the second handle member having a second longitudinal axis, a first end and a second end, wherein the first end of the second handle member is the only portion of the handle connected to the appliance;

the first handle member and the second handle member being connected such that the second longitudinal axis of the second handle member is oriented approximately perpendicular relative to the first longitudinal axis of the first handle member, and

wherein the first end of the first handle member is connected to the second end of the second handle member, the second end of the first handle member is free and unconnected to the appliance, and the first end of the second handle member is connected directly to the appliance with the appliance extending downwardly therefrom along the second longitudinal axis of the second handle member.

2. The appliance with ergonomic handle according to claim 1, wherein the first handle member is oriented for substantially horizontal gripping when a user attempts to use the appliance.

3. The appliance with ergonomic handle according to claim 1, wherein the second handle member is oriented for substantially vertical gripping when a user attempts to use the appliance.

5. The appliance with ergonomic handle according to claim 1, wherein the first end of the first handle member is provided with a reduced diameter when compared to a central portion of the first handle member, the first end of the first handle member being shaped and dimensioned to accommodate the palm and fingers of a hand of a user.

6. The appliance with ergonomic handle according to claim 5, wherein the first end of the first handle member further includes an indentation shaped and dimensioned for receipt by a thumb of a user on the upper surface thereof.

7. The appliance with ergonomic handle according to claim 1, wherein the second end of the first handle member is provided with a swivel member shaped and dimensioned for positioning of a thumb of a user thereon at the free end thereof, the swivel member being shaped and dimensioned to be continuous in shape with the remainder of the first handle member.

8. The appliance with ergonomic handle according to claim 7, wherein a far end of the swivel member includes a ridge aiding a user in positioning a hand thereon by providing the user with a ready indicator as to a tip of the first handle member.

11. The appliance with ergonomic handle according to claim 1, further including a positioning projection at a connection between the first handle member and the second handle member.

12. The appliance with ergonomic handle according to claim 1, wherein the appliance is a hand held mixer.

EVIDENCE APPENDIX

Not Applicable

RELATED PROCEEDINGS APPENDIX

Not Applicable